

1 (3:00 p.m., convene.)

2 MR. TRAVIS: Good afternoon, Your Honor.

3 MR. McCANN: Good afternoon, Your Honor.

4 THE COURT: Mr. McCann.

5 MR. McCANN: Thank you, Your Honor.

6 This is the matter of *United States versus Gary*
7 *Rhines*, 4:CR-01-0310.

8 The defendant was convicted after trial of
9 distribution of cocaine base. The jury found in its verdict
10 that he distributed more than 50 grams of cocaine base.

11 Pursuant to the statute in Title 21, Section 851,
12 notice was given to the defendant of his three prior drug
13 convictions. Your Honor has ruled on the amended notices.
14 And the matter has been set down for sentencing and the
15 government would move sentencing at this time.

16 THE COURT: Thank you, sir.

17 The Court notes, as usual, that there is an
18 addendum to the presentence report containing the probation
19 officer's certification that the presentence report has been
20 disclosed to the defendant, his attorney, and counsel for
21 the government; and that the content of the addendum has
22 been communicated to the parties.

23 Mr. Rhines, is that so, did you get a copy of the
24 presentence report?

25 THE DEFENDANT: Yes, I did.

1 THE COURT: And did you have a chance to go over it
2 with Mr. Travis and, in fact, review it with him?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: Thank you.

5 It notes that the government has no objection to
6 the report as circulated. Is that still true, Mr. McCann?

7 MR. McCANN: Yes, it is, Your Honor.

8 THE COURT: It, on the other hand, lists several
9 objections on behalf of the defendant. Before I call on
10 you, Mr. Travis, with respect to those, I will note a couple
11 things.

12 The Court has ruled today on some of the requests
13 that Mr. Rhines had made in a pro se capacity recently. And
14 so I think copies of that have been provided to you,
15 Mr. Travis; is that right?

16 MR. TRAVIS: Yes.

17 THE COURT: We're all aware of the recent decision
18 of the United States Supreme Court in *Washington versus*
19 *Blakely*. I assume we're aware of that. Mr. McCann?

20 MR. McCANN: Quite aware of it, Your Honor.

21 THE COURT: Mr. Travis?

22 MR. TRAVIS: Yes, Your Honor.

23 THE COURT: Now, it did not, and it expressly did
24 not rule on federal sentencing guidelines, however, the
25 impact will be interesting to observe. I have been advised

1 that I think at least two district courts have held the
2 federal sentencing guidelines unconstitutional, one
3 immediately after the United States Supreme Court ruling.

4 It may well be that a court at some point
5 determines that the manner in which the guidelines
6 themselves in this case were calculated would be subject to
7 question under that ruling. However, the guidelines are
8 trumped by the statutory mandatory life sentence.

9 And, you know, the extent you want to further
10 indicate any argument in that respect for the record, Mr.
11 Travis, you're certainly welcome to do that, but I wanted to
12 make note for the record that the Court was aware of the
13 decision, but the Supreme Court did not act with respect to
14 the federal guidelines, and this Court today is not going to
15 take any action in that regard either.

16 But, Mr. Travis.

17 MR. TRAVIS: Your Honor, as I understood the order
18 that was entered with respect to Mr. Rhines' pro se motion,
19 the Court left open the argument concerning the guidelines,
20 and also --

21 THE COURT: That's right.

22 MR. TRAVIS: -- a second argument.

23 With respect to the guideline argument, as I
24 understand both *Apprendi* and *Blakely*, they have no impact on
25 enhancements that arise out of prior convictions.

1 THE COURT: That's my understanding as well.

2 MR. TRAVIS: Even if this was a guidelines
3 sentence, based on prior convictions I'm not sure that we
4 could take advantage of either of those cases.

5 THE COURT: Yeah, I don't think that you could.

6 MR. TRAVIS: As I understand the sentence which
7 will be imposed today, it is not a guidelines sentence.

8 THE COURT: Correct.

9 MR. TRAVIS: It is an 841 sentence after 851
10 notice.

11 THE COURT: Correct.

12 MR. TRAVIS: And that's something separate and
13 apart from the guidelines.

14 And so I cannot in good faith argue to this Court
15 that there is any prohibition against the calculated
16 sentence which will be imposed. If I'm wrong, that's
17 another item Mr. Rhines can put in his 2255.

18 THE COURT: That's right.

19 MR. TRAVIS: I've looked at the case out of Utah, I
20 think it's *Cloakley*, (phonetic) where they held the
21 guidelines unconstitutional. Again, I don't see that that
22 helps us because this is not a guidelines sentence, it is
23 statutory sentence, as I understand it.

24 THE COURT: I'm aware of that case, but you're one
25 step ahead of me, I haven't had a chance to read it, but I

1 agree with that.

2 MR. TRAVIS: And I think there's a second one out
3 of Maine, but I don't know the name of that one.

4 THE COURT: There's one, it's either Maine or
5 Massachusetts, that came out prior to the *Blakely* holding.
6 That's like a 174-page opinion, which --

7 MR. TRAVIS: That one I don't have, and I have not
8 read that one.

9 THE COURT: Well, that may be a little academic
10 after the Supreme Court -- well, who knows.

11 MR. TRAVIS: And as long as I'm standing and
12 addressing sentencing issues, at least as I -- again, as I
13 understood the Court's order, the issue or the factual
14 scenario concerning Mr. Marino having previously been the
15 District Attorney and subsequently becoming the
16 U. S. Attorney was something that I could address.

17 There's no question that I believe at the point in
18 time when the state prosecution against Mr. Rhines was
19 initiated, Mr. Marino was the District Attorney of Lycoming
20 County. I don't think there's any question that at the time
21 the state agreed to allow the federal government to go
22 forward with the prosecution, that Mr. Marino was the
23 District Attorney. And there's no question that at some
24 point after the federal government took over the
25 prosecution, Mr. Marino did, in fact, get confirmed and

1 sworn in as the U.S. Attorney.

2 I personally fail to see where we go from there as
3 far as the argument is concerned. And, therefore, again, I,
4 in good faith, cannot make any sort of argument to the Court
5 that there is anything improper that this Court should
6 explore.

7 For purposes of the record, I wanted to make that
8 clear. And if I'm -- again, if I'm wrong in that judgment,
9 you know, it's another issue which can be raised in the
10 2255.

11 THE COURT: All right. I would agree with that.

12 And I think that those facts that you've just
13 recited have no -- carry with them no legal impact that I'm
14 aware of either.

15 And I believe that your objections as stated and as
16 referenced by the probation officer in his addendum have
17 essentially been ruled upon by the Court previously. And to
18 the extent that they have not, they're overruled. I think
19 we've addressed those along the way in one place or another.

20 Do you agree with that?

21 MR. TRAVIS: My understanding is that all issues,
22 sentencing issues, other than the two I just mentioned, have
23 previously been addressed by this Court --

24 THE COURT: That's my --

25 MR. TRAVIS: -- in order form.

1 THE COURT: -- understanding, too.

2 That being the case, the Court adopts the
3 presentence report and guideline application without change.
4 That results under the guidelines with a total offense level
5 of 37, a criminal history category of four. The net result,
6 however, is a mandatory life imprisonment by virtue of the
7 act of Congress that has provided for that penalty under the
8 circumstances here presented. And also provides for a
9 supervised release term of ten years, a fine range of
10 \$20,000 to \$8 million. Any fine is waived because of the
11 defendant's inability to pay.

12 If you would all come forward then, please.

13 Mr. Travis, is there anything further you would
14 like to say on behalf of your client? We all recognize that
15 what's said here is rather academic in a sense that the
16 Court is bound by the statute to impose the sentence that is
17 about to be imposed.

18 But, nevertheless, any comments you wish to make
19 with respect to the whole matter are welcome by the Court.

20 MR. TRAVIS: Your Honor, I have given some thought
21 to, you know, doing some sort of Dennis Miller type of rant
22 about sentencing guidelines and enhanced sentences, but I
23 recognize that it's not going to do anybody any good and --

24 THE COURT: That's not the problem. It's not the
25 sentencing guideline enhancements.

1 MR. TRAVIS: Well, I understand. I understand
2 that. It's the statutory enhancements.

3 THE COURT: I mean problem of Mr. Rhines.

4 MR. TRAVIS: Yeah. And, therefore, you know, I
5 recognize that you're mandated to give him a life sentence.
6 I believe Mr. Rhines recognizes that. And so I don't have
7 really anything to say.

8 THE COURT: Mr. Rhines, what would you like to tell
9 the Court? Anything at this point? I mean, it's been a
10 long time coming.

11 THE DEFENDANT: No disrespect to the Court, I
12 really don't have no issues to address as far as like
13 remorse as far as the case because I still believe that I'm
14 innocent. But I wanted to make it clear for the record if
15 any pro se motion that I had wrote can I raise them issues
16 for appeal that I have under my criminal docket sheet, can I
17 raise the issues inside the motions for the Third Circuit?

18 THE COURT: I don't understand what you just said.

19 THE DEFENDANT: Well, the motions that I have filed
20 pro se, all the motions.

21 THE COURT: All of them?

22 THE DEFENDANT: Right. I would like to raise the
23 issues inside them motions that are pro se for the Third
24 Circuit to review, if that's possible?

25 THE COURT: Well, you'll have to speak to the

1 attorney that represents you on appeal. And if you're
2 challenging the effective assistance of Mr. Travis as your
3 trial counsel, then it seems highly probable the Third
4 Circuit will appoint you new counsel.

5 THE DEFENDANT: Okay.

6 THE COURT: But they don't always do that.

7 THE DEFENDANT: I just wanted to ask. I didn't
8 know.

9 THE COURT: Well, I'm not telling you what the
10 Third Circuit will recognize or what it won't recognize, all
11 I'm telling you is to make sure that you bring all of those
12 matters to the attention of your counsel.

13 THE DEFENDANT: Okay.

14 THE COURT: Mr. McCann.

15 MR. McCANN: I have nothing to add, Your Honor. We
16 would move sentencing.

17 THE COURT: Well, as I've already said, whatever
18 the guideline calculation might be, it's trumped by the
19 statutory requirement of Section 841(b) of Title 21 of the
20 United States Code by virtue of the fact that the defendant
21 has two or more prior convictions for felony drug offense
22 that have become final, and that whole matter has been fully
23 explored at great length. And the Court is convinced that
24 based on the notice and the convictions, and this
25 conviction, that the Court is required to impose a sentence

1 of life imprisonment and, therefore, will impose the
2 following sentence:

3 Pursuant to the Sentencing Reform Act of 1984, it
4 is the judgment of the Court that the defendant, Gary
5 Rhines, be committed to the custody of the Bureau of Prisons
6 to be imprisoned for the remainder of his natural life. In
7 accordance with statutory provisions, the defendant shall,
8 if released from imprisonment, be placed on supervised
9 release for a term of ten years. Within 72 hours of release
10 from the custody of the Bureau of Prisons the defendant
11 shall report in person to the probation office in the
12 district to which the defendant is released.

13 While on supervised release the defendant shall not
14 commit another federal, state, or local crime; shall comply
15 with the standard conditions that have been adopted by this
16 court; and shall comply with the following additional
17 special condition: The defendant shall submit to one drug
18 test within 15 days of placement on supervised release, and
19 at least two periodic drug tests thereafter.

20 It is further ordered that the defendant shall pay
21 to the clerk, U.S. District Court, a special assessment of
22 \$100, due immediately. In consideration of the defendant's
23 financial condition and earning capacity, the fine is
24 waived.

25 Mr. Rhines, you can appeal your conviction and

1 sentence to the United States Court of Appeals. You also
2 have a statutory right to appeal your sentence under certain
3 circumstances, particularly if you think the sentence is
4 contrary to law. With few exceptions any notice of appeal
5 must be filed within ten days of judgment being entered in
6 your case.

7 If you're unable to pay the costs of an appeal you
8 may apply for leave to appeal *informa pauperis* and, if
9 approved, counsel will be appointed for you and you will not
10 be required to pay any costs. If you so request the clerk
11 of the court will prepare and file a notice of appeal on
12 your behalf. That concludes the sentence.

13 Mr. Travis, are you going to take care of that?

14 MR. TRAVIS: Yes, I'll take care of drawing up --
15 filing the notice of appeal.

16 THE COURT: What am I missing?

17 MR. TRAVIS: Mr. Rhines asked me, and I forgot to
18 mention to the Court, whether the Court would be willing to
19 recommend that the Bureau of Prisons house him in an
20 appropriate facility as close to Philadelphia as possible?

21 THE COURT: If that's his desire, I certainly have
22 no objection to that. Mr. McCann?

23 MR. McCANN: I have no objection to it. It's up to
24 the Bureau of Prisons, Your Honor.

25 THE COURT: Right. Mr. Rhines, you understand that

1 I can only recommend that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And it depends on what institution they
4 determine to be appropriate.

5 So we'll add to the sentence the following: The
6 Court recommends that the Bureau of Prisons place the
7 defendant in a suitable institution as close as possible to
8 Philadelphia, Pennsylvania.

9 Mr. Travis, anything else?

10 MR. TRAVIS: No.

11 THE COURT: Good luck to you, Mr. Rhines. I think
12 that concludes the proceedings.

13 MR. TRAVIS: Could Mr. Rhines --

14 THE COURT: Have a chance to talk to the folks?

15 MR. TRAVIS: Yes.

16 THE COURT: What's the -- any reason why he can't
17 visit them for about 15 minutes?

18 THE DEPUTY MARSHAL: If ordered by the Court, we
19 have no problem.

20 THE COURT: Okay. You are directed to allow
21 visitation for the next 15 minutes with his family.

22 THE DEPUTY MARSHAL: Yes, sir.

23 MR. TRAVIS: Thank you, Your Honor.

24 (3:14 p.m., court adjourned.)

25

REPORTER'S CERTIFICATE

I, Joan D. Spearing, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

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